



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**APPLICATION FOR CERTIFICATION FOR THE
IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM (ISEGS)**

DOCKET No. 07-AFC-5

COMMITTEE RULING ON APPLICANT'S REQUEST FOR SCHEDULE REVISIONS AND REVISED COMMITTEE SCHEDULING ORDER

On October 31, 2007, the Application for Certification (AFC) filed by Solar Partners, LLC (Applicant), was deemed data-adequate for the twelve-month review process prescribed in Public Resources Code section 25540.6. The U.S. Bureau of Land Management (BLM) is concurrently deciding whether to issue a right-of-way (ROW) grant and amend the 1980 California Desert Conservation Area Plan to allow the Applicant to use the proposed site, which is on federal lands.

The Committee conducted a public Informational Hearing on January 25, 2008, to discuss the schedule and other issues of concern. On January 31, 2008, September 26, 2008, October 29, 2008, and June 2, 2009, we issued Committee Schedules for this case. One of the milestones in the most recent schedule was Staff's notification that it had in hand all of the information necessary to complete the Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS).

On June 8 and June 30, 2009, the Applicant's counsel wrote to the Committee requesting that the schedule be revised to set a specific date for the publication of the FSA/DEIS, either explicitly or by declaring that all necessary information was received by Staff on June 3, 2009, which has the effect under the existing schedule of setting a publication deadline of July 20, 2009. Alternatively, the Applicant requests that the 45 day period begin no later than June 29, 2009, when it filed its Closure and Revegetation Plan. We treat these requests as a motion and rule as follows.

ISEGS is a very large 4,000 acre site, and a highly complex project. It is the first to be processed under a joint, coordinated review by the Energy Commission and BLM. These complexities and possible impacts to the schedule were discussed early in the proceeding and are well known to the Applicant. Nonetheless, significant applicant and staff effort has been expended to resolve these issues—most of this effort has been

expended during a time of significant state budgetary challenges and extraordinary workload. The Energy Commission is committed to expeditious review but in reality is constrained by furloughs, prohibitions against staff overtime, and impediments to hiring and retaining staff.

We recognize the importance of a timely decision to the applicant and are committed to see the State meet its renewable energy goals. Our decision, however, must be based upon a thorough and complete analysis of the environmental impacts and mitigation for those impacts, as well as the project's compliance with applicable federal, state, and local laws, regulations, and standards. That process is affected by:

1. The concurrent BLM permitting process.

The project is proposed on BLM lands and a BLM permit is required. Just as the Energy Commission must conduct an environmental analysis under the California Environmental Quality Act, under current federal procedure the BLM must perform a National Environmental Policy Act (NEPA) analysis as part of its review. The two agency Staffs are cooperating to produce a joint analysis—the FSA/DEIS—that will satisfy both Acts. Several benefits accrue from this cooperative approach, chief among them the coordination of agency requirements to avoid conflicting requirements, perhaps to the point of making the project impossible to construct or operate. Such conflicts could, of course, be corrected in an amendment process but that would take additional time, a commodity repeatedly described by the Applicant as in short supply. Coordination also most efficiently uses Staff resources which are constrained at the Energy Commission and other state agencies.

2. The size of the proposal is approximately 4,000 acres.

The site is larger by a factor of 100 than most power plant applications that the Energy Commission has considered. The site is also habitat for several threatened or endangered species. Mitigation for impacts to those species must be reviewed with state and federal wildlife agencies and their approaches to mitigation coordinated. In addition, the Applicant's design change during the review period to a minimally invasive design, while an improvement from an environmental perspective requires additional time to review and ascertain its impacts.

3. Integrating California Department of Fish and Game and Water Quality Control Board permits into the Energy Commission Certification.

Governor Schwarzenegger's Executive Order S-14-08 directs the Energy Commission and Department of Fish and Game (DFG) to create a "one-stop process" for renewable energy permits under its jurisdiction. Formerly, DFG and the Regional Water Quality Control Board (RWQCB) would issue their own permits following the Commission Decision. Our decisions did analyze the environmental impacts in those topic areas but left the formal grant of the permits and the fine tuning of the mitigation measures to the agencies. The Project Owner then incorporated those requirements into its biological mitigation and drainage plans filed with the Commission during the construction and compliance phase following Certification. Now that the Commission Decision is to replace those separate permits, the details must be resolved prior to, rather than following, certification. For the BLM's purposes, that resolution must occur in time to be discussed in the DEIS.

4. The need for more detailed information about the project than has been required in prior Energy Commission proceedings.

The BLM has required more detailed information about the proposed project than we are accustomed to seeing in previous cases before the Energy Commission. For the more typical natural gas fired power plant that the Energy Commission approved, it was often possible to set performance standards in the Commission Decision and leave the final design details of mitigation such as detailed drainage plans and designation of compensating habitat to the post-certification (compliance) process. However, the proposed sites for those plants were orders of magnitude smaller than this proposal. With the wildlife and water quality permits now integrated into the Energy Commission certification, that approach is no longer viable and, in any event, the BLM has not adopted it for its analysis. As one example, the drainage calculations currently under review by Staff may affect the size of the project's footprint, which in turn affects the amount and type of habitat mitigation. BLM, as landlord, is within its rights to require any information it requires to satisfy NEPA and as steward of those public lands.

The remaining key event is the publication of the FSA/DEIS. Evidentiary Hearings cannot begin until after its release, nor can the BLM's 90-day public comment period start. The Applicant cannot begin construction until both Energy Commission and BLM permits are approved. The coordinated review process conducted to this date remains, in our opinion, the best approach for a useable permission to proceed—if that is our ultimate decision—in the least time. It also allows for effective and convenient public participation and effective use of Staff resources.

On July 9, 2009, Staff notified the parties that, for purposes of the schedule, all of the information that was expected from the Applicant in order to complete the FSA/DEIS

has been received. Still outstanding, but not affecting the start of work, are data from the Applicant about the proposed tortoise relocation sites and reports from the DFG and RWQCB; Staff appears optimistic that those reports will be received in time to allow it to finish an “administrative draft” of the FSA/DEIS within 45 days (August 26, 2009). The actual publication of the document, if it is to be coincident to the BLM’s publication of its Notice of Availability (NOA), must await BLM approval of that notice.

RULING

We do not find that all the information necessary to finish the FSA/DEIS was supplied as of June 3 or June 29. While Staff required no more information from the Applicant regarding the drainage plan, it was necessary to run the Applicant’s model with alternative assumptions in order to provide the complete information package Staff seeks. The revised Closure and Revegetation Plan, was not submitted until June 29, and was not found to be sufficient until sometime following. Even though the 45-day administrative draft preparation period will begin, timely completion remains contingent on the Applicant’s provision of additional data regarding tortoise relocation areas and consultations with state wildlife and water quality officials. The Committee is also concerned that the budget crisis and how it is resolved may have further impact on this siting case.

We are hesitant to set a specific time interval for BLM’s approval of the NOA, a prerequisite to publication of the FSA/DEIS. When we began this proceeding, we were informed that BLM’s notice approval process could take from six to eight weeks or more; more recently, we were informed that the process could be as short as one week for simpler documents. We encourage the Staffs of the Energy Commission and the BLM to do everything in their power to publish the FSA/DEIS as soon after August 26 as is humanly possible.

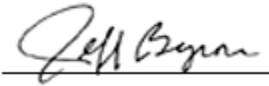
We have modified the schedule (see Attachment A) to reflect an administrative draft finalization date of August 26, 2009. The remainder of the schedule is left as formulas showing the time between the remaining events. The 90-day comment period on the DEIS can be accommodated in our process by holding the time for submitting comments open past the Evidentiary Hearings, if necessary. Doing so will not impede the timely preparation of the Presiding Member’s Proposed Decision (PMPD). If necessary, comments filed at the end of the comment period can be considered during the comment period for the PMPD.

Special Reminder to Persons or Organizations considering whether to intervene in this proceeding: While California Code of Regulations, title 20, section 1207 allows the filing of a Petition to Intervene as late as the Evidentiary Hearings (with a showing of good cause for petitions filed after the Prehearing Conference), you are hereby

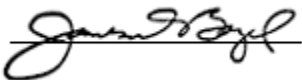
informed that the Committee will not, absent extraordinarily good cause, adjust any of the deadlines in the Schedule on account of a late intervenor. For example, if your Petition is granted after the deadline for submission of opening testimony, you will not be allowed to submit opening testimony.

The Committee may modify the schedule at any time upon either our own motion or that of a party. [Cal. Code Regs., tit. 20, § 1709.7(c).] The frequency of Status Reports remains at four week intervals to aid in our monitoring of progress.

Dated July 15, 2009, at Sacramento, California.

A handwritten signature in cursive script, reading "Jeff Byron", written over a horizontal line.

JEFFREY D. BYRON
Commissioner and Presiding Member
Ivanpah AFC Committee

A handwritten signature in cursive script, reading "James D. Boyd", written over a horizontal line.

JAMES D. BOYD
Vice Chair and Associate Member
Ivanpah AFC Committee

ATTACHMENT A

REVISED COMMITTEE SCHEDULE

FOR THE

IVANPAH SOLAR ELECTRIC GENERATING SYSTEM

(07-AFC-5)

DATE	EVENT - <i>Related BLM Actions are Shown for Convenience</i>
October 31, 2007	AFC data adequate
January 4, 2008	Staff conducts data response/issue resolution workshop
January 25, 2008	Site Visit and Informational Hearing
February 28, 2008	Local, State, and Federal Agency draft determinations, including air district's Preliminary Determination of Compliance (PDOC) filed
Late March, 2008	Staff conducts data response/issue resolution workshop
Winter, 2008 – Spring, 2009	Data exchanged among parties
September 22, 2008	Applicant Files Data Responses required by Staff to complete its preliminary analysis
October 15 & 27, 2008	Committee Conference
December 5, 2008	Staff publishes Preliminary Staff Assessment (PSA)
When all concerned agencies' concerns are addressed	Formal consultation on Biological Assessment initiated
December 30, 2008	Local, State, and Federal Agency final comments and determinations, including air district's Final DOC filed
January 9, 2009	Staff conducts PSA workshops
May 18, 2009	Committee Conference
June 26, 2009 and every four (4) weeks thereafter until the FSA/DEIS is filed	Parties file Status Reports
August 26, 2009	Administrative Draft of the Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS) completed
Tbd	BLM Notice of Availability (NOA) of DEIS published
Tbd, concurrent with BLM publication of NOA of DEIS	Staff files FSA/DEIS
FSA/DEIS + 2 weeks	Applicant's opening testimony and preliminary identification of contested issues filed and served
FSA/DEIS + 4 weeks	Staff and other parties file and serve opening testimony (other than FSA/DEIS) and Prehearing Conference Statements; Applicant files Prehearing Conference Statement
FSA/DEIS + 5 weeks	All parties file rebuttal testimony and identify materials referred to in other parties' opening testimony of which they want copies
FSA/DEIS + 5 weeks	Prehearing Conference

REVISED COMMITTEE SCHEDULE (CONTINUED)

DATE	EVENT - Related BLM Actions are Shown for Convenience
FSA/DEIS + 6 weeks	All requested material is served on all other parties
FSA/DEIS + 7 weeks	Evidentiary Hearings
3 weeks after Evidentiary Hearings close	Post hearing briefs filed
90 days after NOA published	BLM DEIS public comment period ends. Comments that are received prior to or during the Evidentiary Hearings will be addressed (as necessary) in the PMPD. Comments made after the Evidentiary Hearings will be addressed in the PMPD or as comments on the PMPD.
6 - 7 weeks after Evidentiary Hearings close	Presiding Member's Proposed Decision (PMPD) issued for 30-day comment period
Approx. 25 days after PMPD issued	PMPD comment hearing
35 days after PMPD issued	Revised PMPD issued* for 15-day (30 days if significant environmental information added) review period*
Tbd	Federal Biological Opinion issued (or its content known with sufficient certainty)
As FEIS final approaches publication	Energy Commission Final Decision adoption hearing
Tbd	BLM NOA of FEIS published
30 days after Commission adoption hearing	Judicial review period for Energy Commission Decision ends
60 days after NOA of FEIS published	Governor's consistency review period ends (this schedule assumes the Governor finishes his review in 30 days)
30 days after NOA of FEIS published	FEIS protest period ends
Shortly after FEIS protest period ends	BLM issues Record of Decision, Right of Way grant and Plan Amendment

Tbd = to be determined

* = if necessary

Issued: July 15, 2009